

# FACT SHEET

**BROWNFIELDS AND LIABILITY  
STATE OF INDIANA  
FEBRUARY 2001**



## **OVERVIEW OF BROWNFIELD LIABILITY**

IDEM's pledge to make Indiana a cleaner and healthier place to live may be best exemplified through its Brownfields Program. A brownfield is an abandoned, idled, or under-used industrial or commercial property or facility where expansion or redevelopment is hampered by suspected or actual contamination. The IDEM Brownfields Program provides technical and financial assistance to local units of government to address environmental issues in redevelopment efforts. The Program's intent is to promote sustainable development, provide revenue for the community, and maintain economic growth. The Program's goal is to reduce the number of brownfields and prevent future pollution.

To participate in the Program, a unit of government may contact the Brownfield Program for assistance. The Brownfield Environmental Assessment can help answer questions regarding the extent (if any) of the contamination at the site, potential cleanup costs, and environmental liability. Because specific liability and exemption issues vary from case to case, IDEM will aid local governments in assessing liability for contamination at brownfield sites.

## **ISSUES OF LIABILITY**

Different laws apply to different types of contamination. The following explains two common categories of contamination and possible liability.

### **LIABILITY FOR HAZARDOUS SUBSTANCES**

Much of the contamination at brownfields consists of hazardous substances left behind by closed or abandoned businesses and facilities.

These substances may include solvents, plasticizers, oxidizers, acids, bases and other heavy metals and chemicals, but by law exclude petroleum. Under state and federal laws, owners of property contaminated by hazardous substances may be liable, even if they did not contribute to the contamination or know about it at the time of purchase. Also, parties that caused the release of contaminants, including a government entity, are not exempt from liability. However, in many cases, owners and operators of sites contaminated exclusively from off-site hazardous substance releases may not be held liable. Units of government that acquired the property involuntarily through tax sales, bankruptcy, or abandonment, also are not liable. In addition, units of government are not liable if they acquire the property voluntarily and conduct the necessary cleanup associated with hazardous substances at the site.

Environmental laws regarding liability for hazardous substances include:

► **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).** CERCLA, also known as the "Superfund," is a federal law created to clean up uncontrolled or abandoned hazardous sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Through the act, EPA and the states were given power to seek out those parties responsible for any release and assure their cooperation in the cleanup.

► **Indiana Hazardous Substance Response Trust Fund Law.** This law establishes liability for cleanup of sites with hazardous substances. It is the state version of CERCLA.

► **Resource Conservation and Recovery Act (RCRA).** RCRA includes oversight of the generation, transportation, treatment, storage, and disposal of hazardous waste, as well as the remediation of environmental problems that may have resulted from improper handling of hazardous waste.

► **Indiana Responsible Property Transfer Law.** This law addresses disclosure requirements in transfer of property.

### **LIABILITY FOR PETROLEUM RELEASES**

Although not considered a hazardous substance, petroleum is another major source of contamination at brownfields and shares many of the same liability issues. For example, owners or operators of a property with petroleum contamination are liable, even if they did not contribute to the contamination or know about it at the time of purchase. Also, parties responsible for the release of petroleum contamination, including government entities, are liable. However, if the contamination was caused by an underground storage tank (UST) that was closed or removed before 1984, the owner of that UST when it ceased operation is responsible for the contamination, even if the UST is now the property of a new owner. In many cases, owners and operators of sites contaminated exclusively from off-site petroleum spills or releases may not be held liable.

Environmental laws regarding liability for petroleum include:

► **Federal Oil Pollution Act (OPA).** The OPA requires oil storage facilities and vessels to submit plan to the Federal government plans detailing how they will respond to large discharges. EPA has published regulations for aboveground storage facilities; the Coast Guard has done so for oil tankers.

► **Indiana Petroleum Releases Law.** This state law sets forth the requirements of an owner, operator, or a responsible party for undertaking the

removal or remedial action with respect to a release of petroleum at a petroleum facility.

► **Indiana Underground Storage Tank Law.** This law establishes requirements for UST owners, operators, or responsible parties regarding tank installation, leak detection and prevention, cleanup liability, and financial assistance sources.

### **IDEM CLEANUP PROGRAMS**

State programs that aid the cleanup of hazardous substances and petroleum contamination include:

► **IDEM's State Cleanup Program.** This program was created to manage projects the federal Superfund Program. State Cleanup is a state-administered program with jurisdiction over hazardous substances and petroleum releases. The State Cleanup Program ensures the remediation of contaminated sites.

► **Voluntary Remediation Program (VRP)** The VRP provides a mechanism for stakeholders to voluntarily enter into an agreement with IDEM to clean up contaminated property. When the cleanup is completed successfully, IDEM issues a Certificate of Completion and the Governor's office issues a Covenant Not to Sue. These documents provide assurance that the remediated release will not be subject to future IDEM enforcement action.

► **Abandoned Tank Community Assistance Program (ATCAP).** If a local unit of government has involuntarily taken the responsibility for properties with abandoned underground storage tanks, it may receive assistance with closing these tanks by applying to ATCAP. The community can then proceed with further cleanup (if necessary) and redevelopment.

► **Excess Liability Trust Fund (ELTF).** This fund provides financial assurance mechanisms for the reimbursement of monies spent by registered underground storage tank owners and operators on the clean up of petroleum releases.

To review specific statutory requirements regarding the possible liabilities of individuals and units of government owning property with hazardous substance or petroleum contamination, please see:

Indiana Codes (IC) 13-22 IC 13-23, IC 13-24-1, IC 13-25-4, and IC 13-25-5

United States Codes: 33 U.S.C. 2701-2761, 42 U.S.C. 6901-6992k, 42 U.S.C. 9601-9675

Liability for environmental contamination is a complex, fact-based issue. Whether a community has been left with an abandoned property and needs financial assistance or a is interested in voluntarily developing a site, IDEM's Brownfields Program is ready to assist. This document does not constitute formal agency rulemaking and should not substitute for the advice of trained professionals.

To discuss eligibility, including exemptions of liability, please contact:

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